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UNITED STATES DISTRICT COURT

2

DISTRICT OF NEVADA

3

4

UNITED STATES OF AMERICA,

) Case No. 2:21-mj-109-DJA

5

Plaintiff,

) Las Vegas, Nevada

6

vs.

) Monday, February 1, 2021

) Courtroom 3A

7

NATHANIEL J. DEGRAVE,

) INITIAL APPEARANCE IN RULE

8

Defendant.

) 5(c)(3) PROCEEDINGS VIA

) VIDEOCONFERENCE

9

C E R T I F I E D C O P Y

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TRANSCRIPT OF PROCEEDINGS

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BEFORE THE HONORABLE DANIEL J. ALBREGTS,

14

UNITED STATES MAGISTRATE JUDGE

15

APPEARANCES:

16

For the Plaintiff:

17

UNITED STATES ATTORNEY'S OFFICE

18

BY: NICHOLAS D. DICKINSON, AUSA

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(Appearances continued on Page 2)

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DIGITALLY RECORDED:

Liberty Court Recorder (LCR)

4:42:50 p.m. - 5:32:20 p.m.

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RECORDED BY:

J. Ries

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Proceedings recorded by electronic sound recording; transcript produced by machine shorthand and computer-aided transcription.

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1 APPEARANCES CONTINUED:

2 For the Defendant:

3 FEDERAL PUBLIC DEFENDER'S OFFICE
4 BY: CRISTEN THAYER, AFPD
5 411 East Bonneville Avenue, Suite 250
6 Las Vegas, NV 89101
7 (702) 366-6577

8 Also present:

9 Misty Sanchez
10 United States Pretrial Services

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1 LAS VEGAS, NEVADA; MONDAY, FEBRUARY 1, 2021; 4:42:50 P.M.

2 --oOo--

3 P R O C E E D I N G S

05:12:02 4 COURTROOM ADMINISTRATOR: United States of America vs.
05:12:07 5 Nathaniel DeGrave, 2:21-mj-109-DJA. This is an initial
05:12:19 6 appearance on a Rule 5.

05:12:23 7 Counsel, make your appearance, please.

05:12:26 8 MR. DICKINSON: Nicholas Dickinson for the
05:12:28 9 United States.

05:12:28 10 THE COURT: Good afternoon, Mr. Dickinson.

05:12:34 11 MS. THAYER: Good afternoon. Cristen Thayer for
05:12:41 12 Mr. DeGrave, who is present and appearing by video at the
05:12:46 13 Nevada Southern Detention Center.

05:12:48 14 THE COURT: Good afternoon, Ms. Thayer. Have you --
05:12:51 15 and is it DeGrave or Degrauve (phonetic)?

05:12:59 16 THE DEFENDANT: DeGrave.

05:13:00 17 THE COURT: All right. Mr. DeGrave.

05:13:02 18 Ms. Thayer, have you had a chance to talk to
05:13:05 19 Mr. DeGrave about appearing via videoconference as opposed to
05:13:10 20 in person given the pandemic?

05:16:19 21 MS. THAYER: Yes, Your Honor, and he has agreed to
05:16:21 22 appear by video to have the appearance today.

05:16:27 23 THE COURT: Mr. DeGrave, is that true, rather than
05:16:35 24 having yourself transported down to Las Vegas for an in-person
05:16:41 25 hearing, you agree to appear via videoconference as a result of

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05:16:46 1 the pandemic?

05:16:48 2 THE DEFENDANT: Yes, Your Honor.

05:16:49 3 THE COURT: All right. Well, thank you, Mr. DeGrave.
05:16:51 4 I appreciate that.

05:16:52 5 Good afternoon. My name is Daniel Albregts. I'm a
05:17:21 6 United States Magistrate Judge for the District of Nevada and
05:17:24 7 you've been brought before the Court on a complaint which was
05:17:26 8 filed on January 28th, 2020, and that complaint originates out
05:17:31 9 of the District of Columbia.

05:17:32 10 Is your true name Nathaniel DeGrave?

05:17:40 11 THE DEFENDANT: Yes, it is, Your Honor.

05:17:41 12 THE COURT: How old are you, sir?

05:17:43 13 THE DEFENDANT: I am 31.

05:17:45 14 THE COURT: How far have you gone in school?

05:17:48 15 THE DEFENDANT: I have gone to 11th grade.

05:17:50 16 THE COURT: So you read, write, and understand
05:17:52 17 English?

05:17:53 18 THE DEFENDANT: Yes, I do, Your Honor.

05:17:54 19 THE COURT: Are you currently under the care of a
05:17:56 20 doctor or a physician for any medical condition?

05:18:00 21 THE DEFENDANT: No, Your Honor.

05:18:01 22 THE COURT: Are you currently being treated for any
05:18:03 23 psychiatric problem or mental health -- or mental illness?

05:18:10 24 THE DEFENDANT: No, Your Honor.

05:18:11 25 THE COURT: Have you consumed any alcohol or taken any

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05:18:16 1 prescribed medication, controlled -- or controlled substances
05:18:21 2 in the last 24 hours?

05:18:23 3 THE DEFENDANT: No, Your Honor.

05:18:25 4 THE COURT: Mr. DeGrave, you're informed that you're
05:18:27 5 charged in a three-count complaint as follows:

05:18:31 6 In Count One with Knowingly Entering or Remaining in
05:18:37 7 any Restricted Building or Grounds Without Lawful Authority in
05:18:39 8 violation of Title 18 United States Code § 1752(a)(1) and § 2;
05:18:53 9 in Count Two with Violent Entry and Disorderly Conduct on
05:19:02 10 Capital Grounds in violation of Title 40 United States Code
05:19:12 11 § 5 -- 5104(e)(2)(D), (E), (F), and (G); and in Count Three
05:19:25 12 with Obstruction of Law Enforcement During a Civil -- During
05:19:28 13 Civil Disorder in violation of Title 18 United States Code
05:19:36 14 § 231(a)(3).

05:19:37 15 Mr. DeGrave, have you received a copy of that
05:19:40 16 complaint?

05:19:42 17 THE DEFENDANT: I have, Your Honor.

05:19:43 18 THE COURT: Have you read it?

05:19:45 19 THE DEFENDANT: Yes, I have.

05:19:46 20 THE COURT: Mr. DeGrave, you're advised of your rights
05:19:49 21 as follows:

05:19:49 22 You're not required to make any statement about this
05:19:54 23 charge, either here in open court or to any law enforcement
05:19:58 24 officer. Anything you do say can be used against you.

05:20:02 25 Because this case was brought from a different

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05:20:05 1 district from where you were arrested, in this district, you
05:20:08 2 have the right to an Identity Hearing at which the government
05:20:11 3 will be required to show that you are, in fact, the person
05:20:14 4 named in the complaint. This Identity Hearing is not merely to
05:20:17 5 establish that your name is Nathaniel DeGrave, but rather that
05:20:24 6 you are, in fact, the person charged in the complaint. You
05:20:27 7 may, if you so choose, waive your right to that Identity
05:20:30 8 Hearing in this district and proceed directly to the District
05:20:33 9 of Columbia to contest the charges.

05:20:34 10 You also have a right to a Preliminary Hearing in this
05:20:38 11 district at which the government will be required to provide
05:20:42 12 evidence that there is probable cause to believe you committed
05:20:44 13 the crime charged in the complaint. At the Preliminary
05:20:47 14 Hearing, you have the right to cross-examine any adverse
05:20:52 15 witnesses against you and to subpoena witnesses to appear on
05:20:56 16 your behalf and to introduce evidence on your behalf at that
05:21:00 17 hearing. You may elect to have the Preliminary Hearing
05:21:02 18 conducted in the District of Columbia where the prosecution is
05:21:05 19 pending. In the event an Indictment is filed against you
05:21:10 20 regarding the charges contained in the complaint, the
05:21:12 21 Preliminary Hearing will be vacated and you will appear before
05:21:14 22 the Court to be arraigned on the Indictment and to enter a plea
05:21:19 23 to any charges contained in the Indictment.

05:21:23 24 Because you are charged in the District of Columbia
05:21:28 25 and you were arrested in the District of Nevada, you are

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05:21:32 1 further advised that under Rule 20 of the Federal Rules of
05:21:36 2 Criminal Procedure a prosecution may be transferred from the
05:21:38 3 district where the complaint has been filed to the district
05:21:41 4 where the defendant is arrested if the defendant states in
05:21:43 5 writing he wishes to plead guilty or no contest and to waive a
05:21:47 6 trial in the district where the complaint is pending, and the
05:21:50 7 defendant consents in writing in the court in the district of
05:21:55 8 the arrest and the district of the arrest may dispose of the
05:21:59 9 case. Now, if you wish to do that, you need the consent of
05:22:08 10 both the United States Attorney in this district and the
05:22:12 11 District of Columbia.

05:22:13 12 Finally, you have the right to the assistance of legal
05:22:15 13 counsel at all stages of these proceedings that I have
05:22:18 14 described here today, and if you cannot afford a lawyer, the
05:22:21 15 Court will appoint a lawyer for you at the public's expense.

05:22:27 16 Mr. DeGrave, do you understand these rights?

05:22:31 17 THE DEFENDANT: Yes, I do, Your Honor.

05:22:40 18 THE COURT: And can you afford to hire an attorney at
05:22:42 19 the present time?

05:22:45 20 THE DEFENDANT: At the moment, no, Your Honor.

05:22:46 21 THE COURT: All right. I have before me a Financial
05:22:49 22 Affidavit with your name at the top, what appears to be some
05:22:52 23 financial information, and a signature at the bottom. Did you
05:22:55 24 provide financial information to Ms. Thayer so she could
05:22:59 25 complete this Financial Affidavit for my consideration?

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05:23:04 1 THE DEFENDANT: Yes, I did, Your Honor.

05:23:06 2 THE COURT: And when you did that, did you do that
05:23:08 3 understanding you were doing it under the penalties of perjury,
05:23:10 4 meaning all that financial information you provided to her has
05:23:12 5 to be true and correct to the best of your knowledge?

05:23:16 6 THE DEFENDANT: Yes, Your Honor.

05:23:17 7 THE COURT: And is that information true and correct
05:23:18 8 to the best of your knowledge?

05:23:21 9 THE DEFENDANT: Yes, it is, Your Honor.

05:23:22 10 THE COURT: And did you give Ms. Thayer your
05:23:24 11 permission to -- her -- your permission to sign it at the
05:23:29 12 bottom indicating that that financial information is true and
05:23:32 13 correct?

05:23:34 14 THE DEFENDANT: Yes, Your Honor.

05:23:35 15 THE COURT: All right. Based upon it that affidavit,
05:23:37 16 I find that you are financially unable at the present time to
05:23:41 17 retain counsel. I'll therefore appoint the Federal Public
05:23:48 18 Defender's Office to represent you. Ms. Thayer is an attorney
05:23:52 19 in their office and she's here today to represent you.

05:23:54 20 Have you had a chance to speak to her today regarding
05:23:56 21 the allegations contained in the complaint?

05:24:09 22 THE DEFENDANT: Yes, Your Honor.

05:24:10 23 THE COURT: And do you understand those allegations
05:24:12 24 and the purpose of today's hearing?

05:24:15 25 THE DEFENDANT: Yes, Your Honor.

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05:24:16 1 THE COURT: Ms. Thayer, do you have any reason to
05:24:17 2 question the competency of your client to assist in his
05:24:20 3 defense, to understand the nature of the charge against him, or
05:24:22 4 understand the purpose of today's hearing?

05:24:25 5 MS. THAYER: I do not, Your Honor.

05:24:27 6 THE COURT: And do you waive a reading of the
05:24:29 7 complaint?

05:24:32 8 MS. THAYER: Yes, we do.

05:24:33 9 THE COURT: Noting the government's obligation, the
05:24:36 10 Court will advise you that under federal law, including
05:24:41 11 Rule 5(f) of the Federal Rules of Criminal Procedure, the
05:24:46 12 Supreme Court's decision in *Brady vs. Maryland* and all the
05:24:53 13 applicable decisions interpreting *Brady*, the government is
05:25:01 14 ordered to disclose to the defendant in a timely manner all
05:25:04 15 information or evidence known to the government that is either,
05:25:06 16 one, relevant to the defendant's guilt or punishment, or, two,
05:25:13 17 favorable to the defendant on the issue of guilt or punishment.
05:25:25 18 Consequences for violating either this order or the
05:25:29 19 government's obligation under *Brady* include, but are not
05:25:37 20 limited to, the following: Contempt, sanction, referral to a
05:25:46 21 disciplinary authority, adverse jury instruction, exclusion of
05:25:55 22 evidence and/or dismissal of charges. A written order will
05:26:01 23 follow.

05:26:03 24 The Court will determine whether there is a date
05:26:06 25 necessary for a hearing in D.C. depending on a detention

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05:26:21 1 determination.

05:26:21 2 On the matter of pretrial release, what is the
05:26:24 3 government's position?

05:26:36 4 MR. DICKINSON: The government seeks detention,
05:26:39 5 Your Honor.

05:26:39 6 THE COURT: And are you ready to proceed today?

05:26:42 7 MR. DICKINSON: Yes, Your Honor.

05:26:43 8 THE COURT: Ms. Thayer, are you ready to proceed?

05:26:46 9 MS. THAYER: Yes, Your Honor.

05:26:46 10 THE COURT: And have you gone over the
05:26:49 11 Pretrial Services report with your client?

05:26:51 12 MS. THAYER: Yes.

05:26:51 13 THE COURT: And did you have an opportunity to review
05:26:53 14 the government's detention memorandum found at Document 1?

05:26:57 15 MS. THAYER: I did, Your Honor.

05:26:58 16 THE COURT: All right. I will hear -- and I asked if
05:27:01 17 you're ready to proceed; correct? You're ready to go?

05:27:08 18 MS. THAYER: Yes.

05:27:09 19 THE COURT: All right. Thank you.

05:27:09 20 Mr. Dickinson.

05:27:11 21 MR. DICKINSON: Yes, Your Honor, same -- same with
05:27:19 22 our -- technical difficulties, the government is going to rely
05:27:33 23 strongly on the fact that the Court and Ms. Thayer have read
05:27:37 24 the complaint in this case as well as the government's
05:27:39 25 detention memo. Just wanted to point out a few things.

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05:27:43 1 First, obviously, the conduct the defendant engaged in
05:27:46 2 is -- is extremely troubling. He was part of the mob that
05:27:50 3 stormed the United States Capitol on the 6th objecting to the
05:27:58 4 certification of the president, endangering members of
05:28:06 5 Congress, the vice president, the vice president-elect.

05:28:10 6 The defendant -- this was premeditated. The defendant
05:28:16 7 was in videos right with his -- with a Ronald Sandlin, who's
05:28:28 8 appeared before this Court today. Mr. Sandlin made sort of
05:28:31 9 more aggressive remarks than Mr. DeGrave. Mr. DeGrave was
05:28:42 10 sitting right there. He takes the camera. He says, "We are
05:28:45 11 protecting the country. If the shit goes down, I say, 'bring
05:28:48 12 it.' We are not silent anymore." He's right there when
05:28:55 13 Mr. Sandlin is discussing that they want to take the Capitol
05:29:00 14 later in the day.

05:29:02 15 One thing is the defendant here was dressed in
05:29:05 16 tactical gear, full body armor, a helmet, and a face mask.

05:29:14 17 The felony he's charged with relates to his assaulting
05:29:17 18 of an officer/officers in the Capitol. They get in a shoving
05:29:28 19 match. The defendant then, where he's in full tactical gear,
05:29:34 20 including the helmet, raises his hands like a boxer and stands
05:29:40 21 off. That picture is in the complaint. And then after some
05:29:51 22 time -- which I don't believe this is in the complaint -- the
05:29:56 23 defendant pounds his chest and at that point he lifts off his
05:30:00 24 helmet revealing that it is the defendant.

05:30:04 25 Needless to say, if someone wants to protest in body

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05:30:07 1 armor, to each their own. However, when the defendant's
05:30:13 2 dressed like this and storms the Capitol, it clearly sends a
05:30:18 3 message, it's intimidating, and then he assaults an officer.

05:30:21 4 Both the defendant -- the defendant started deleting
05:30:26 5 his social media postings shortly thereafter regarding the
05:30:30 6 events of that day.

05:30:31 7 Note that he traveled all the way from Nevada to the
05:30:33 8 District of Columbia to engage in this behavior. Again, the
05:30:38 9 evidence is overwhelming that he was going to D.C. to look for
05:30:45 10 trouble with others, and did just that, in an unprecedented
05:30:50 11 attack on this country.

05:30:53 12 He shows no respect for the law. There's nothing to
05:30:56 13 give this Court any satisfaction that he will obey the orders
05:31:00 14 of the Court.

05:31:01 15 Real quickly, looking at the Pretrial Services report,
05:31:13 16 little to no verification. Was not able to talk to the
05:31:16 17 roommate. The one friend they did talk to, I'll just note,
05:31:19 18 said that he's not -- the defendant's not militant in any way.
05:31:26 19 The only way to describe what the defendant did on the 6th is
05:31:29 20 militant.

05:31:41 21 There's no details on his online business. He
05:31:43 22 provided nothing of any detail about what this work entails, if
05:31:50 23 he's earning income, et cetera.

05:31:53 24 He lost his active passport. He has international
05:31:56 25 travel.

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05:31:58 1 So, in short, the government does not believe the
05:32:01 2 Court can fashion conditions or a combination of conditions
05:32:14 3 related to releasing this defendant.

05:32:16 4 THE COURT: Thank you, Mr. Dickinson.
05:32:17 5 Ms. Thayer.

05:32:20 6 MS. THAYER: Thank you, Your Honor.

05:32:20 7 I'd like to begin by taking one step back to the
05:32:25 8 government's motion for a Detention Hearing in the very first
05:32:27 9 place here. The government relies in its memo on (f)(2)(B) of
05:32:39 10 the Bail Reform Act at § 1752 of the code. That subsection
05:32:50 11 requires that the government provide some evidence that
05:32:54 12 Mr. DeGrave presents a "serious risk," that he will "obstruct
05:32:59 13 or attempt to obstruct justice." The rest of that provision
05:33:04 14 indicates that what is really at issue here is whether this
05:33:07 15 person will be ob- --

05:33:24 16 (Videoconference terminated).

05:33:24 17 COURTROOM ADMINISTRATOR: Hang on. I think they
05:33:28 18 realized it, Judge.

05:34:04 19 THE COURT: Okay.

05:34:05 20 COURTROOM ADMINISTRATOR: You want to do this
05:34:07 21 telephonically?

05:34:09 22 THE COURT: Not this one. We have to be in person.
05:34:11 23 The next one maybe, but not with this and these facts and these
05:34:17 24 cases --

05:34:19 25 COURTROOM ADMINISTRATOR: I just wasn't sure.

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05:34:21 1 THE COURT: -- so we --

05:34:33 2 COURTROOM ADMINISTRATOR: No. Definitely, Judge.

05:34:36 3 We'll get another one opened up again and --

05:35:32 4 THE COURT: Get it opened and do it and then we'll see
05:36:04 5 if Ms. Thayer will do the last one telephonically.

05:36:14 6 COURTROOM ADMINISTRATOR: Okay.

05:36:16 7 THE COURT: But this one we have to do in person.

05:36:18 8 COURTROOM ADMINISTRATOR: Definitely, Judge.

05:36:32 9 THE COURT: And that IT has to -- this has to --

05:37:11 10 COURTROOM ADMINISTRATOR: I will -- I will talk to
05:37:12 11 them, Judge.

05:41:43 12 (Recess taken from 4:55:02 p.m. till 5:07:51 p.m.)

05:41:43 13 THE DEFENDANT: Yes, I can, Your Honor.

05:41:44 14 THE COURT: And Mr. DeGrave, I apologize. We are
05:41:46 15 having problems with the equipment. It keeps kicking us off.
05:41:54 16 Hopefully, we can finish the hearing before it does that.

05:41:57 17 Ms. Thayer, you were telling me why -- well, just
05:42:02 18 continue if you remember where you were at in your argument.
05:42:07 19 You had just started.

05:42:08 20 MS. THAYER: I do, Your Honor. And just for the
05:42:11 21 record, I was just lodging an objection about the government's
05:42:16 22 threshold to meet some sort of obstruction showing for in the
05:42:20 23 future that there would be obstruction in this case, and I
05:42:25 24 don't think they've done that. All they've cited is the
05:42:31 25 alleged conduct that occurred on November 6th, which had

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05:42:35 1 nothing to do with the administration of this case or sort of a
05:42:44 2 pattern of conduct where he would do so in the future.

05:42:48 3 So, with that preliminary matter objected to, I would
05:42:52 4 just like to focus more -- more importantly, if the only
05:43:28 5 reason that we're here under the preponderance or
05:43:58 6 (unintelligible) standards that apply.

05:44:02 7 Turning first to the risk of non-appearance, the
05:44:05 8 pretrial officer does recommend that Mr. DeGrave could be a
05:44:10 9 risk of non-appearance but there are surely conditions that
05:44:15 10 could be imposed that would alleviate any of those risk. And
05:44:18 11 the government hasn't rebutted that evidence or anything in the
05:44:21 12 report with -- with any other evidence or proffer that would
05:44:25 13 show that he is actually a risk of non-appearance. So the
05:44:29 14 government essentially provided to this Court a closing
05:44:32 15 argument that would be a preview for their trial case, but that
05:44:38 16 is not actually relevant to the risk of non-appearance and, so,
05:44:42 17 the government has not met its burden, even under
05:45:12 18 preponderance, to show that, especially in light of Pretrial's
05:45:18 19 recommendation.

05:45:18 20 And, so, I'd like to focus more on the danger aspect,
05:45:22 21 which I actually think that the pretrial report, the
05:45:27 22 recommendation might be in part driven by what I would say is
05:45:32 23 an error in the report. At Page 3, there is a discussion
05:45:38 24 about. . . the AUSA in this case -- I believe that is
05:45:50 25 Mr. Dickinson and he can correct me if I'm wrong -- that he

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05:45:58 1 reported that there was a search of my client's home and they
05:46:03 2 found a lawfully registered firearm in his nightstand. But
05:46:12 3 then, the report goes on to state that it should be noted the
05:46:18 4 defendant self-reported there are no weapons at his residence.

05:46:22 5 It is my understanding, actually, that Mr. DeGrave
05:46:24 6 was interrogated after he was interviewed -- or after he was
05:46:29 7 arrested and admitted to precisely where that firearm was
05:46:33 8 located, even saying it was in -- next to the nightstand. So,
05:46:36 9 that, to me -- of course, I do not have the discovery in this
05:46:40 10 case yet, the government is the only one with the recorded --
05:47:13 11 oh, well, I would assume recorded, I guess we don't know --
05:47:27 12 with any sort of record of the interrogation, but that is a
05:47:31 13 very crucial fact to me because -- especially because
05:47:34 14 Mr. DeGrave admitting he has a lawfully registered firearm and
05:47:43 15 it -- and telling them exactly where it is.

05:47:45 16 I would submit that once that fact is corrected, then
05:47:48 17 the dangerousness drops off because all that is left is the
05:47:56 18 government's closing argument about the nature of the alleged
05:48:00 19 offenses. And, of course, that is a factor and it can be an
05:48:03 20 important one, but it is just one of the factors. The Court
05:48:06 21 has to look at everything before it, and Mr. DeGrave is not
05:48:09 22 dangerous.

05:48:18 23 And before I move on from the offenses, I'd like to
05:48:21 24 further contextualize them. I've pulled up the statutes and
05:48:25 25 the very -- the first count is actually a wobbler, so it could

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05:48:38 1 be a felony or a misdemeanor depending on whether it's an
05:48:42 2 attempt and conspire to enter grounds without lawful authority.
05:48:50 3 It could be a felony or misdemeanor depending on what is proven
05:48:55 4 at trial. So that is not as serious of a charge as the
05:49:00 5 government's complaint would indicate.

05:49:01 6 The same is true -- or, actually, and for Count Two,
05:49:05 7 Violent Entry and Disorderly Conduct, that actually is a
05:49:13 8 misdemeanor that only carries 6 months in jail as the highest
05:49:16 9 penalty.

05:49:17 10 Count Three is the only pure felony that is charged,
05:49:21 11 and the statutory cap is not more than 5 years.

05:49:24 12 So as this Court is aware, those are quite low
05:49:28 13 statutory caps for federal offenses, and that must factor in
05:49:36 14 that although, of course, the conduct here is serious and it is
05:49:40 15 a federal offense and what happened is serious, I'm not trying
05:49:47 16 to mitigate the allegations, but the reality is these are not
05:49:51 17 offenses that are charged in a serious manner and that should
05:50:02 18 not be -- the facts cannot overshadow the actual legal
05:50:16 19 guidelines at play here, which is that this is mostly
05:50:19 20 misdemeanor conduct that is charged, allegations.

05:50:22 21 And then that turns me to the actual factual
05:50:25 22 allegations in the complaint. At Page 2, there is sort of a
05:50:55 23 passive voice about a shoving match between my client and other
05:51:01 24 charged individuals and the police. I would admit -- I would
05:51:07 25 submit, though, that there's no screenshot of the alleged

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05:54:05 1 shoving match. However, there is a screenshot of my client
05:54:09 2 allegedly putting up his fists and beating his own chest, which
05:54:13 3 I would submit is not anything to the officer, but, in fact,
05:54:19 4 hitting his own self, which is not showing he's a danger to
05:54:24 5 others. So, on the -- the one allegation that the government
05:54:31 6 has where he may have -- where he's alleged to have shoved an
05:54:34 7 officer, there's not actually corroborating proof with a
05:54:41 8 screenshot and if it existed, I would submit it would be in
05:54:44 9 this complaint because there are screenshots of less egregious
05:54:56 10 conduct. So the Court should take that into account that this
05:55:02 11 was a huge group and it will be unclear who was shoving who,
05:55:08 12 especially as this Court knows just from being at a concert,
05:55:12 13 there's momentum going with the group. You can't necessarily
05:55:17 14 ascribe intent to that shoving, and that's the only physical
05:55:24 15 conduct the Court has -- or the government has identified.

05:55:27 16 I'd like to also point out, of course my client has
05:55:32 17 almost no criminal history. He has a couple of
05:55:35 18 non-prosecutions for shoplifting as a youth and also when he
05:55:44 19 was 19. So there's -- there's just not a risk of a pattern of
05:55:49 20 this behavior. He's now 31. So, this is -- this is not
05:56:01 21 something the Court should be concerned about, especially if
05:56:07 22 the Court fashioned a condition saying stay away from anyone
05:56:10 23 else who you know was, you know, charged in this event, or
05:56:18 24 if -- something to keep him away from the group because even as
05:56:21 25 his friend stated in the report, Mr. Fleming, that he's -- he's

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05:56:47 1 not -- he wouldn't have been a leader in this, he would have
05:56:52 2 been a follower. So maybe at best, he's got -- at worst he got
05:57:03 3 swept up in this. So isolating him away from anyone else
05:57:08 4 charged in this conduct I think would be more than sufficient
05:57:12 5 to alleviate any concerns the Court would have, and there's
05:57:19 6 just no indication that Mr. DeGrave, now that, of course, he's
05:57:30 7 sat in federal custody, would engage in any sort of dangerous
05:57:35 8 behavior at this point moving forward.

05:57:39 9 And we'd just ask that the Court release him to his
05:57:43 10 home where he's lived for 4 years. I was not able to -- my
05:57:46 11 investigator couldn't find a phone number for his roommate. He
05:57:51 12 doesn't know it by heart. To me, that is very common nowadays.
05:57:56 13 I do not know many numbers by heart either because they're all
05:57:59 14 just saved in our smartphones, but I do think that there's --
05:58:04 15 that Probation -- or that Pretrial was able to confirm he's
05:58:16 16 lived there and there's no concern of any -- and I believe he
05:58:22 17 was arrested there, so, there's no doubt that's his home and
05:58:25 18 that he can be supervised there.

05:58:27 19 So, unless the Court has questions, I would submit on
05:58:30 20 that.

05:58:33 21 Thank you.

05:58:33 22 THE COURT: All right. No questions.

05:58:34 23 Mr. Dickinson.

05:58:38 24 MR. DICKINSON: Just briefly, Your Honor.

05:58:40 25 The government -- the government did report the

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05:58:41 1 firearm because Pro- -- Pretrial, they always ask if we knew
05:58:48 2 that there's a firearm in the house and it is correct, the
05:58:52 3 government -- law enforcement found that it was legally
05:58:54 4 registered to him, so at that point it was left depending on
05:58:58 5 the outcome of further proceedings. Obviously, if he's going
05:59:03 6 to -- if he'd be released, the government would want the
05:59:11 7 firearms out of the home.

05:59:16 8 Just briefly, Your Honor, I mean, the government needs
05:59:21 9 to show an attempt obstruction. And granted, it's one factor,
05:59:27 10 but this case is just different than any other I'm assuming
05:59:34 11 that's probably been before Your Honor and there's probably
05:59:37 12 never been a collective bigger attempt to obstruct justice than
05:59:41 13 what the defendant engaged in. So, the government goes back to
05:59:46 14 that and submits it to Your Honor.

05:59:48 15 THE COURT: All right. The Court's reviewed the
05:59:52 16 government's detention memorandum found at Document No. 1, the
05:59:58 17 Pretrial Services report, the complaint, has considered the
06:00:03 18 arguments of the parties.

06:00:04 19 The Court does find by a preponderance of the evidence
06:00:06 20 that he is a risk of non-appearance based upon the following:

06:00:09 21 First, the lack of confirmation or verification of his
06:00:47 22 living arrangements, the fact that they could not or nobody
06:00:54 23 could figure out or contact his roommate. While it's
06:00:59 24 apparently clear he lives there, the circumstances surrounding
06:01:00 25 that are unclear to the Court. More importantly, the lack of

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06:01:09 1 confirmation about his employment, his income, and the -- the
06:01:15 2 vague nature of what he's doing for a living, his possession of
06:01:21 3 a passport, extensive foreign travel, his substance use
06:01:27 4 history, and I think the facts and circumstances of this case
06:01:30 5 are such that the Court finds by a preponderance of the
06:01:33 6 evidence he is a risk of non-appearance.

06:01:35 7 The Court also finds that he's a danger to the
06:01:37 8 community based upon the nature of the instant alleged offense
06:01:39 9 and the substance use history.

06:01:41 10 Counsel points out, and correctly so, that the nature
06:01:48 11 of the offense is but one consideration, is the least important
06:01:53 12 consideration, but the Court cannot conceive of any similar
06:01:56 13 type of offense such as storming the Capitol with a mob of
06:02:01 14 people intent on overturning a lawful election and doing so
06:02:06 15 with whatever means necessary, including violence. In
06:02:10 16 preparation for that, this young man wears full body armor,
06:02:13 17 tactical gear, along with a face mask in anticipation of that.
06:02:16 18 And, so, the Court does find that given the nature and
06:02:20 19 circumstances and allegations in this case, they do rise to the
06:02:28 20 level -- notwithstanding what the Bail Reform Act directs me to
06:02:32 21 do -- to the level that he is a danger by clear and convincing
06:02:36 22 evidence.

06:02:37 23 And I also find that he is a risk to obstruct the
06:02:42 24 government and obstruct justice as a result of not only his
06:02:45 25 conduct, which is extensive in preparing for what happened on

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06:02:47 1 this date, but in what he did afterwards, including deleting
06:02:51 2 social media postings and traveling back to Las Vegas. And,
06:02:55 3 so, I do find that he's a risk to obstruct as well.

06:02:58 4 Furthermore, I find that there are no condition or
06:03:00 5 combination of conditions that would address these concerns.
06:03:04 6 As I indicated in the last case, given the nature of the
06:03:06 7 allegations and the facts and evidence presented to the Court
06:03:08 8 to support those allegations, even if I thought conditions
06:03:11 9 would address these concerns, I'm not convinced he would follow
06:03:14 10 them.

06:03:14 11 The man, as I indicated, went to Washington, D.C. in
06:03:18 12 full body armor and face mask to disrupt a lawful election with
06:05:28 13 a mob of other people, with whatever -- by whatever means they
06:05:35 14 found appropriate. The facts of this case reflected he has an
06:05:38 15 utter disregard and lack of respect for some of the most
06:05:42 16 important institutions in our country and more importantly, a
06:05:49 17 lack of respect for the laws of this nation. And with that
06:05:52 18 lack of respect, the Court cannot conceive and isn't convinced
06:05:56 19 that he would respect this institution, the judiciary, any more
06:06:12 20 than he's respected all the other institutions and that he
06:06:16 21 would take conditions seriously or follow the conditions if I
06:06:19 22 were to impose them as a condition of release.

06:06:22 23 And, so, I do find that he's a danger and a flight
06:06:25 24 risk, and a risk to obstruct justice such that no combination
06:06:35 25 of conditions will address those concerns. I will detain you

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06:06:39 1 pending your transportation back to the District of Columbia to
06:06:42 2 face these charges. I will ask Mr. Dickinson to provide a
06:06:46 3 report to the Court in 30 days if he's not transferred back
06:06:49 4 outlining when the Court -- or when the government thinks he
06:06:52 5 will be brought back to Washington, D.C.

06:06:55 6 I do have, Ms. Thayer, a waiver of the Identity
06:06:59 7 Hearing. Do I understand it correctly, you would like to have
06:07:02 8 a Preliminary Hearing in this district?

06:07:02 9 (Brief pause in proceedings).

06:07:09 10 THE COURT: Ms. Thayer?

06:07:11 11 Everybody stopped, Jerry.

06:07:15 12 COURTROOM ADMINISTRATOR: Gosh. No, they're moving,
06:07:18 13 Judge. We've lost you for some reason. I know you're on
06:07:23 14 there, but you're not on my screen, Judge, so I don't know
06:07:30 15 what's going on.

06:07:38 16 THE COURT: Mr. DeGrave, can you hear me?

06:07:42 17 Boy, I got to tell you. . .

06:10:51 18 (Videoconference terminated).

06:10:51 19 THE COURT: All right, folks. Apologize again. We
06:10:54 20 were kicked off.

06:10:55 21 Everybody hear us okay?

06:10:57 22 So I had made my record on the detention. Did
06:11:00 23 everybody hear that before we were switching to the waiver?

06:11:03 24 (No audible response).

06:11:23 25 THE COURT: All right. So, Ms. Thayer, I have a

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06:11:27 1 waiver for the Identity Hearing. Did you, indeed, want the
06:11:29 2 Preliminary Hearing to be scheduled in this court?

06:11:34 3 MS. THAYER: I believe. . . yes, for now. Is it still
06:11:40 4 a 14-day deadline? I apologize, Your Honor. I haven't had a
06:11:48 5 Rule 5 with a complaint in awhile.

06:11:57 6 THE COURT: Well --

06:11:59 7 MS. THAYER: So -- so yes, we'd like to not waive
06:12:04 8 that. I'd like to at least talk to his D.C. attorneys when
06:12:11 9 they get appointed.

06:12:14 10 THE COURT: Well, I can certainly set it, but he's not
06:12:18 11 going to be taken back or transported until we have that
06:12:20 12 hearing if everything's finalized here. So -- but if we set
06:12:24 13 it, you can always file a written waiver and we can vacate it
06:12:27 14 and I can issue an order sending him back if that's how you
06:12:33 15 decide you want to go as well.

06:12:37 16 MS. THAYER: Yes. If that's okay with Your Honor, can
06:12:40 17 we please set it today and then I will speak with my client and
06:12:46 18 we'll decide where to go from there and let the Court and the
06:12:49 19 government know as soon as possible.

06:12:52 20 THE COURT: All right, Jerry. So let's set that.

06:12:57 21 COURTROOM ADMINISTRATOR: Okay. Judge, I'm just going
06:13:02 22 to mute this real quick.

06:13:05 23 THE COURT: All right.

06:13:16 24 (Brief pause in proceedings).

06:14:05 25 THE COURT: All right. We were just looking at dates,

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06:14:15 1 and the -- 2 weeks from today is February 15th, and that is
06:14:20 2 President's Day, and so we will set it for the 16th.

06:14:24 3 Mr. Dickinson, I intend, at this stage, to set it for
06:14:27 4 3 o'clock, understanding that that's 6 o'clock back in the
06:14:32 5 east, but for now, that's when I will set it and we will see
06:14:34 6 how this plays out with what you need via witnesses or timing
06:14:42 7 or the like.

06:14:44 8 And, so, Jerry, give us a date for the Preliminary
06:14:51 9 Hearing.

06:14:51 10 COURTROOM ADMINISTRATOR: Your Honor, that will be
06:14:52 11 3:00 p.m., and it will be via videoconferencing.

06:14:58 12 THE COURT: On Tuesday, February 16th, 2021.

06:15:03 13 COURTROOM ADMINISTRATOR: I apologize, Your Honor.

06:15:04 14 THE COURT: No problem.

06:15:05 15 All right. You have waived the Identity Hearing and
06:15:08 16 the production of a warrant, so the identity issue has been
06:15:11 17 waived but -- and Mr. DeGrave, did you talk to Ms. Thayer about
06:15:15 18 your right to an Identity Hearing and waiving that right
06:15:18 19 indicating that all you're admitting is you're the
06:15:23 20 Nathaniel DeGrave that they're looking -- that's named in that
06:15:27 21 complaint and you're not admitting anything else? Do you agree
06:15:34 22 to that?

06:15:38 23 THE DEFENDANT: Yes, Your Honor.

06:15:39 24 THE COURT: And you talked to Ms. Thayer about that?
06:15:45 25 Did you talk to Ms. Thayer about that?

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06:15:48 1 THE DEFENDANT: Yes, Your Honor.

06:15:50 2 THE COURT: All right. And, so, the Court will find
06:15:51 3 that that waiver is voluntarily and knowingly given after
06:15:56 4 discussing his right to have an Identity Hearing and discussing
06:15:59 5 that right with Ms. Thayer and, so, we'll set the matter for a
06:16:06 6 Preliminary Hearing.

06:16:08 7 You will be remanded to the custody of the marshal
06:16:10 8 pending that Preliminary Hearing. Of course, if you decide to
06:16:13 9 waive that, we can remand you immediately and that will speed
06:16:16 10 the process of getting you back to D.C.

06:16:18 11 Mr. Dickinson, you can hold that Status Report. I
06:16:23 12 will make a further order on that depending on when we have a
06:16:26 13 prelim or what happens on down the line.

06:16:28 14 Is there anything else from the government on this
06:16:30 15 matter?

06:16:30 16 MR. DICKINSON: No, Your Honor. Thank you.

06:16:31 17 THE COURT: All right. Anything else from the
06:16:33 18 defense, Ms. Thayer?

06:16:35 19 MS. THAYER: No, Your Honor.

06:16:36 20 THE COURT: All right. That concludes this matter.

06:16:39 21 Sir, if you can knock on that door and get their
06:16:42 22 attention.

23 (Proceedings adjourned at 5:32:20 p.m.)

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C E R T I F I C A T E

I, Heather K. Newman, court-approved transcriber, certify
that the foregoing is a correct transcript transcribed from the
official electronic sound recording of the proceedings in the
above-entitled matter.

/s/ Heather K. Newman
Heather K. Newman

2-9-2021
Date

06:16:42